

G. T. Knight Company, Incorporated and Oregon, Southern Idaho, Wyoming & Utah District Council of Laborers, Laborers' International Union of North America, AFL-CIO. Case 36-CA-3953

June 21, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

Upon a charge filed on August 10, 1981, by Oregon, Southern Idaho, Wyoming & Utah District Council of Laborers, Laborers' International Union of North America, AFL-CIO, herein called the Union, and duly served on G. T. Knight Company, Incorporated, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 19, issued a complaint on September 29, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act, as amended.

With respect to the unfair labor practices, the complaint alleges, in substance, that at all times material herein, and continuing to date, the Union has been the representative for the purposes of collective bargaining of all laborers employed by Respondent; that Respondent and the Union entered into a short form collective-bargaining agreement on August 23, 1976, governing wages, hours, and working conditions of unit employees. By the terms of this agreement Respondent also agreed to be bound by the terms of the Master Labor Agreement between Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., and the Union, which by its terms expires May 31, 1983. It is further alleged that notwithstanding Respondent's contractual commitment to the Union, Respondent, on or about February 10, 1981, failed to continue in full force and effect all the terms and conditions of employment of its employees as set forth in said collective-bargaining agreement, and did refuse and continues to refuse to bargain collectively with the Union by unilaterally, and without notice to or bargaining with the Union, canceling its contract with the Union, and ceasing to make monetary contributions to various trust funds established pursuant to the provisions of the collective-bargaining agreement. Respondent has not filed an answer to the complaint.

On March 1, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 8,

1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on September 29, 1981, and duly served on Respondent the same day, specifically states that unless an answer to the complaint is filed by Respondent within 10 days from the service thereof "all of the allegations in said Complaint shall be deemed to be admitted to be true and may be so found by the Board." According to the record herein, and the uncontroverted allegations of the Motion for Summary Judgment, Respondent failed to file an answer to the complaint within 10 days from its service. On March 1, 1982, counsel for the General Counsel filed the Motion for Summary Judgment herein, and, on March 8, 1982, the Board issued a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted and found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent G. T. Knight Company, Incorporated, is an Oregon corporation, with its principal office and place of business in Lake Oswego, Oregon. Respondent is engaged in the construction industry as a masonry contractor. During the past calendar year, which period is representative of its operations during all times material herein, Respondent, in the course and conduct of its business operations, did a gross volume of business in excess of \$500,000. During this same period of time, Respondent provided services in excess of \$50,000 for other enterprises within the State of Oregon, including C-3 Construction and Lawson Construction, which firms are directly engaged in commerce.

We find, on the basis of the foregoing, that Respondent G. T. Knight Company, Incorporated, is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

The labor organization comprising the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Unit*

At all times material herein, the Union has been, and is now, the lawfully designated exclusive collective-bargaining representative of the following appropriate unit of Respondent's employees:

All laborers employed by Respondent and covered by the short-form collective-bargaining agreement Respondent entered into on August 23, 1976, binding Respondent to the terms of the Master Labor Agreement between Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., and the Union, which expires May 31, 1983, excluding office clerical employees, guards and supervisors as defined in the Act, and all other employees.

B. *The 8(a)(5) and (1) and 8(d) Charges*

Since on or about February 10, 1981, and continuing to date, Respondent G. T. Knight Company, Incorporated, has failed to continue in full force and effect all the terms and conditions of employment of its employees as set forth in its collective-bargaining contract with the Union by unilaterally canceling said contract with the Union, including the various vacation, trust, training, health and welfare, and pension trust provisions thereof, and ceasing to make the prescribed monetary contributions to the trust funds.

Accordingly, we find that by the aforementioned conduct Respondent G. T. Knight Company, Incorporated, has, since on or about February 10, 1981, and at all times thereafter, refused to bargain collectively with the Union as the representative of its employees in the appropriate unit described above, and that by such conduct Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent G. T. Knight Company, Incorporated, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit. We shall further order that Respondent make whole the employees in the unit found appropriate herein by paying all contributions to the trust funds as provided in the short-form agreement Respondent entered into on August 23, 1976, and the Master Labor Agreement between Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., which expires on May 31, 1983, and the Union, which have not been paid and which would have been paid absent Respondent's unlawful discontinuance

of such payments; and to post the attached notice.¹ See *Haberman Construction Company*, 236 NLRB 79 (1978). Further, we shall order that Respondent reimburse its employees for medical and hospital expenses incurred, including personal health insurance premium expenses, as a result of Respondent's unlawful cancellation of the employees' health and welfare benefit plan. See *Sam Tanksley Trucking, Inc.*, 210 NLRB 656 (1974). Respondent will be required to preserve and, upon request, make available to authorized agents of the Board all records necessary or useful in determining compliance with the Order.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. G. T. Knight Company, Incorporated, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Oregon, Southern Idaho, Wyoming & Utah District Council of Laborers, Laborers' International Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All laborers employed by Respondent and covered by the short-form collective-bargaining agreement Respondent entered into on August 23, 1976, binding Respondent to the terms of the Master Labor Agreement between Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., and the Union, which expires May 31, 1983, excluding office clerical employees, guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By virtue of its execution of a short-form agreement, G. T. Knight Company, Incorporated, has been bound by a collective-bargaining agreement known as the Master Labor Agreement between Oregon-Columbia Chapter, The Associated

General Contractors of America, Inc., and the Union, which by its terms expires on May 31, 1983.

5. G. T. Knight Company, Incorporated, violated Section 8(a)(5) and Section 8(d) of the Act by unilaterally changing the terms and conditions of employment of its employees, and unilaterally canceling its contract with the Union, including the various vacation trust, training, health and welfare, and pension trust provisions thereof, and ceasing to make the prescribed monetary contributions to the trust funds as required by the provisions of said contract.

6. By the aforesaid acts and conduct, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, G. T. Knight Company, Incorporated, Lake Oswego, Oregon, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to continue in full force and effect, and unilaterally changing, the terms and conditions of employment of its employees, by canceling its collective-bargaining contract with the Union, including the vacation, trust, training, health and welfare, and pension trust provisions thereof.

(b) Failing and refusing to make the prescribed monetary contributions to the trust funds as required by the provisions of its contract with the Union.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, recognize and bargain collectively with said Union as the exclusive bargaining representative of the employees in the aforesaid unit with respect to rates of pay, wages, hours of work, and other terms and conditions of employment.

¹ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See *Merryweather Optical Company*, 240 NLRB 1213 (1979).

We are of the opinion that the policies of the Act will best be effectuated if the notice which Respondent is required to sign and post includes an introductory paragraph explaining to employees their rights under the Act, and by what process their rights have been upheld.

(b) Immediately recognize and comply with the provisions of the short-form collective-bargaining agreement with the Union, incorporating the Master Labor Agreement between Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., and the Union, which expires on May 31, 1983.

(c) Make such monetary contributions to the trust funds as required by the provisions of its contract with the Union, as were previously made on behalf of those employees in the aforesaid unit, and would have continued to be made had Respondent not unlawfully discontinued such contributions.

(d) Make whole all of its employees for any loss of benefits suffered and expenses incurred by reason of Respondent's conduct, as provided in the section hereof entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the moneys due under the terms of this Order.

(f) Post at its facility in Lake Oswego, Oregon, copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT fail or refuse upon request to bargain collectively and in good faith with said Union as the exclusive bargaining representative of the employees in the following appropriate unit:

All laborers employed by the Employer and covered by the short-form collective-bargaining agreement the Employer entered into on August 23, 1976, binding the Employer to the terms of the Master Labor Agreement between Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., and the Union, which expires May 31, 1983, excluding office clerical employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT unilaterally change the terms and conditions of employment of the employees in the above unit without prior notice to and consultation with said Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL immediately recognize and comply with the provisions of the short-form collective-bargaining agreement with the Union, incorporating the Master Labor Agreement between Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., and the Union, which expires on May 31, 1983.

WE WILL make such monetary contributions to the trust funds as are required by the contract with the Union and which were previously made on behalf of employees in the aforesaid unit, and would have continued to be made had we not unlawfully discontinued such payments.

WE WILL make whole all employees for any loss of benefits suffered by reason of our conduct.

WE WILL reimburse all employees who incurred medical and hospital expenses, including personal health insurance premium expenses, as a result of our unlawful cancellation of our employees' health and welfare benefit plan.

WE WILL, upon request, recognize and bargain collectively with said Union as the representative of the employees in the above unit with respect to rates of pay, wages, hours of

work and other terms and conditions of employment.

G. T. KNIGHT COMPANY, INCORPORATED